In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 358

W. W. CHAMBERS COMPANY, INC., *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 1a-2a) is not yet reported. The Board's decision and order (R. 93-97)[1] are reported at 125 NLRB No. 78.

JURISDICTION

The judgment of the Court of Appeals was entered on June 16, 1960 (Pet. 2a-3a). The petition for a writ of certiorari was filed on August 24, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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[1] "R" refers to the Joint Appendix filed with the court below.

QUESTIONS PRESENTED

1. Whether substantial evidence supports the Board's findings that petitioner violated Sections 8(a)(3) and (1) by discharging two employees engaged in union activities and by coercively interrogating other employees concerning their union participation.

2. Whether petitioner was denied due process of law at the unfair labor practice hearing.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are set forth in the Appendix to the petition (Pet. 7a-11a).

STATEMENT

A. *The Board's Findings.*—In January 1959, employees Crase and Morrison requested help of Office Employees International Union, Local 2, AFL-CIO, in organizing their fellow employees (R. 74, 79; 32-33, 41). The Union supplied application cards which were subsequently signed by an undisclosed number of employees (R. 74-75; 33, 41). On February 17, nine employees including Crase and Morrison attended a Union meeting, and the signed application cards were returned to Union business agent Etheredge (R. 74-75; 6-7, 34, 42).

On February 18, Etheredge telephoned Company President W. W. Chambers and requested recognition of the Union (R. 75; 7-8). Chambers asked for the names of employees who had signed cards but Etheredge declined to reveal them. Instead, he proposed a card check against the Company payroll by a disinterested person to resolve any doubt as to the Union's majority status (R. 75; 7-8). Chambers rejected this suggestion and Etheredge concluded the discussion by

stating that the Union would file a representation petition with the Board (R. 75; 7-8).

Later in the same day Chambers contacted Company Vice-President Echols and Assistant General Manager Tolson and asked whether either knew of Union activity among Company employees. Both Company officials replied in the negative (R. 75; 15, 23, 27, 28).

That same evening, Assistant General Manager Tolson questioned five or six employees about the Union activity, inquiring whether "they had attended any union meeting" and also "trying to find out . . what men and how many men were going to be affiliated with the union meeting that had taken place" (R. 75; 15-16, 20). Tolson reported to Chambers later that evening that he had learned that there had been a Union meeting attended by a few employees (R. 75; 18). A day or so afterward, Chambers told Tolson that employee Howard had acknowledged attendance at the Union meeting (R. 75-76, 18-19).

On February 19, Vice-President Echols questioned about 12 employees concerning their interest in joining the Union and whether they had signed Union cards. Although some employees admitted attending the meeting, none acknowledged having signed a Union card (R. 76; 24-27). When Chambers asked Echols later that day to make an inquiry about the Union activity, Echols replied that he "had already done the job" and could report to Chambers at that time what he had learned of the employees' Union sympathies (R. 76; 27).

On the morning of February 19, Chambers called employee Crase to his office and asked him about the Union activities and the participation of Crase and other employees (R. 77; 35). Crase admitted contacting the Union representative but evaded answering.

questions regarding other employees. Chambers accused Crase of being "disloyal," presented him with his paycheck and discharged him (R. 77; 35).

A few minutes later employee Morrison was called to Chambers' office (R. 77; 34, 43). Chambers questioned Morrison "about this union business" and about "this meeting that happened the other night," but Morrison answered that he could tell Chambers "very little" (R. 77; 34, 43). Thereupon Chambers remarked that he expected loyalty from his employees and that Morrison had demonstrated his disloyalty. Chambers then presented Morrison his paycheck and discharged him.

B. *The Board's Conclusions and Order.*—On the basis of the foregoing facts, the Board affirmed the Trial Examiner's finding that the Company had violated Sections 8(a)(3) and (1) of the Act by discharging employees Crase and Morrison for their Union activities and by unlawfully interrogating other employees concerning Union matters (R. 93).

The Board's order (R. 94-97) requires the Company to cease and desist from discharging or in any other manner discriminating against its employees because of their concerted or other union activities, and from interrogating its employees, or in any other manner interfering with, restraining or coercing its employees in the exercise of their rights under the Act. Affirmatively, the Board ordered the Company to reinstate Crase and Morrison with back pay and to post appropriate notices.

C. *The decision of the Court of Appeals.*—The Court of Appeals, in a *per curiam* decision, affirmed the Board's findings as adequately supported by the record and enforced the Board's order (Pet. 1a-2a).

ARGUMENT

1. Petitioner's substantive contention is that the Board's findings are not supported by substantial evidence and that the Board "ignored all the evidence given by one side and with studied design gave credence to the testimony of the other side" (Pet. 14). The court below, however, found that "substantial evidence" supported the Board's findings that the Company discriminatorily discharged employees Crase and Morrison and coercively interrogated employees about their union activities and that these "findings support the order." The facts summarized in the Statement fully justify that conclusion. In these circumstances, no issue warranting further review by this Court is presented. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491.

2. Equally insubstantial is petitioner's contention that it was denied due process of the law by various events occurring at the unfair labor practice hearing (Pet. 7-10). The record reveals that the decision of petitioner's president Chambers himself to represent the Company's interests at the hearing was a voluntary one. Moreover, the Trial Examiner, aware of the fact that Chambers was not an attorney, exercised care to see that he understood his rights and the issues of the case, offered suggestions in the conduct of his cross-examination, and relaxed any technicality which might handicap a layman (See R. 9, 11, 12, 17-18, 22-23, 29-30, 49, 50, 52, 53, 59-62, 65).

No denial of Chambers' right to present or examine witnesses or to introduce evidence occurred. When, during the examination of witnesses Tolson and Echols by counsel for the General Counsel, each witness was shown his own affidavit, the Trial Examiner directed that a copy be handed over to Chambers and declared

a five-minute recess so that he might examine the document (R. 17-18, 22). Chambers did not ask for the recess in either case nor did he thereafter indicate that he wished further time. Furthermore, at the close of petitioner's case, which consisted only of Chambers' testimony, the Trial Examiner asked, "Any more witnesses?", and Chambers replied, "I have none" (R. 59).[2] Finally, the Trial Examiner properly rejected Chambers' offer to submit as evidence a decision of the District Workmen's Compensation Board that employee Morrison was not discharged for insubordination, as there claimed by petitioner, but only because "he did not render service satisfactory to the employer" (R. 67). The proceedings before that body, in which the Board did not participate and which did not purport to go into the unfair practice questions here, could have no direct bearing on the Board's determination in this case.

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[2] And when Chambers, in the course of his closing argument (R. 64-65), alluded to fact that he could bring witnesses in, the Trial Examiner spoke to him as follows (Transcript, p. 117):

> TRIAL EXAMINER: Mr. Chambers, on two or so occasions in your argument, you spoke of witnesses whom you might call but have not called. In one instance you said your motive was to expedite the hearing. I want this record to be clear that you have not been precluded from calling one nor has any suggestion been made to you that you have not called a witness. The decision is entirely yours.
> MR. CHAMBERS: I understand.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

STUART ROTHMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel.

NORTON J. COME,
Assistant General Counsel.

HERMAN M. LEVY,
Attorney,
National Labor Relations Board.

September 1960

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